

GARY S. POSENJAK

IBLA 81-1099

Decided April 27, 1982

Appeal from a decision of the California State Office, Bureau of Land Management, declaring abandoned and void the Poseys Pickin's II placer mining claim. CA MC 42394.

Vacated and remanded.

1. Mining Claims: Determination of Validity--Mining Claims: Location--Mining Claims: Relocation

An "amended location" of a mining claim is a subsequent location intended to further the rights acquired by the earlier locator while making some change in the location, such as changing the name of the claim or its owners of record (as where the original claim has been sold) or excluding excess acreage. In contrast to a "relocation," an "amended location" does relate back to the date of the filing of the original notice of location, so that the filer does receive the rights associated with the earlier location, including its superiority to subsequent withdrawals, to the extent that the amended location merely furthers rights acquired by a prior subsisting location, and does not include any new land. The owner of a claim, determined to be an amended location of a claim originally located on or before Oct. 21, 1976, is required to comply with the provisions of 43 U.S.C. § 1744(a) (1976) and 43 CFR 3833.2-1(a) insofar as these provisions deal with claims located on or before Oct. 21, 1976.

APPEARANCES: Gary S. Posenjak, pro se.

## OPINION BY ADMINISTRATIVE JUDGE LEWIS

Gary S. Posenjak appeals from a decision of the California State Office, Bureau of Land Management (BLM), dated September 11, 1981, vacating its decision of October 17, 1980, and reinstating its original decision of September 30, 1980. This original decision declared the Poseys Pickin's II placer mining claim abandoned and void because of appellant's failure to file with BLM a copy of the location notice of this claim within 90 days after the date of its location. By the terms of 43 U.S.C. § 1744(c) (1976), the failure to file such instrument within the time prescribed shall be deemed conclusively to constitute an abandonment of the mining claim.

It is undisputed that a copy of the location notice of the Poseys Pickin's II claim was filed with BLM on September 18, 1979. This notice recited that the date of location of the claim was March 29, 1978. Applying the terms of 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2(b) to these facts, BLM returned to appellant his tendered filing and held the claim to be abandoned and void. Section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1976), requires the owner of an unpatented mining claim located after FLPMA's enactment, October 21, 1976, to file within 90 days after the date of location a copy of the official record of the notice or certificate of location. The regulation, 43 CFR 3833.1-2(b) is to the same effect.

In his notice of appeal, appellant states that this claim was actually located prior to October 21, 1976, i.e., on January 21, 1976, by Wayne Erickson. A copy of Erickson's location notice appears in the file and reveals that Wayne Erickson and Robert L. Edwards located the Big Flat placer mining claim on November 27, 1975. The Big Flat location notice bears the filing stamp of the Trinity County Recorder showing a filing date of January 21, 1976. Appellant calls these facts to our attention, because under the terms of 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2(a), the owner of an unpatented mining claim located prior to October 21, 1976, could timely file a copy of the official record of the notice of location on or before October 22, 1979.

There also appears in the file a document purporting to be a quit-claim deed from Wayne Erickson to appellant transferring land situated "in the Western Section," Trinity County, California, and bounded and described as "3 miles east of Big Flat on the Trinity River." <sup>1/</sup> This document, dated March 29, 1978, and appellant's contention that the Poseys Pickin's II claim was actually located on November 27, 1975, as the Big Flat placer mining claim apparently persuaded BLM to vacate its earlier decision of September 30, 1980, and hold that claimants R. L. Edwards and Gary Posenjak had complied with applicable recordation laws. A decision to this effect issued on October 17, 1980.

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<sup>1/</sup> By letter of Sept. 1, 1981, to Pastor Gary Posenjak, Wayne E. Erickson noted that the legal description of this claim should have read "3 miles east of Big Bar."

On September 11, 1981, BLM vacated its October 17 decision and reinstated its original decision of September 30, 1980, which held Poseys Pickin's II abandoned and void for appellant's failure to timely record. The basis for this new decision was BLM's finding that Poseys Pickin's II was not, in fact, one and the same claim as the Big Flat because the Poseys Pickin's II location notice was not marked "amended." This new decision also mentions a third party, presumably Richard Arbo, who "has substantiated" that the Poseys Pickin's II claim was located on March 29, 1978. The file reveals that Mr. Arbo claims to be the owner of the Mazie placer mining claim whose area overlaps that of appellant's claim.

[1] We begin by pointing out that BLM seems to have relied on a faulty premise in invalidating the Poseys Pickin's II claim in its most recent decision. In R. Gail Tibbetts, 43 IBLA 210 (1979), the Board held that there is no absolute requirement that an amended location be denoted as such on the face of the location notice. While the failure to designate the Poseys Pickin's II location notice as an "amended location" gives rise to the inference that appellant did not intend this claim to be an amended location, the omission of these words does not inevitably lead to this conclusion. R. Gail Tibbetts, *supra* at 228; American Resources, Ltd., 44 IBLA 220 (1979).

The import of a determination that the Poseys Pickin's II claim is an amended location of a pre-FLPMA claim is set forth in American Resources, Ltd., *supra* at 223:

An "amended location" of a claim is a subsequent location intended to further the rights acquired by the earlier locator while making some change in the location, such as changing the name of the claim or its owners of record (as where the original claim has been sold) or excluding excess acreage. In contrast to a "relocation," an "amended location" does relate back to the date of the filing of [the] original notice of location, so that the filer does receive the rights associated with the earlier location, including its superiority to subsequent withdrawals, to the extent that the amended location merely furthers rights acquired by a prior subsisting location, and does not include any new land. [Emphasis in original; footnote omitted.]

BLM erred in concluding that Poseys Pickin's II was not an amended location of the Big Flat placer mining claim simply because its location notice was not marked "amended." On remand, BLM should reconsider whether Poseys Pickin's II is an amended location in light of the cases cited herein.

Prior to any extended reconsideration of this issue, however, BLM should examine its records to determine whether appellant met the requirements of 43 U.S.C. § 1744(a)(2) (1976) and 43 CFR 3833.2-1(a). Under this statute and regulation, the owner of a claim located prior to October 21, 1976, was required to file prior to October 22, 1979, evidence of assessment work or a notice of intention to hold the claim. Assuming, as appellant must to escape the 90-day recodation provision of 43 U.S.C. § 1744(b) (1976), that the Poseys Pickin's II claim is an amended location of a pre-FLPMA claim, the obligations of a pre-FLPMA claim must necessarily attach. The

file does not reveal that any such documents were filed prior to October 22, 1979.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the California State Office is vacated and the case remanded for action consistent herewith.

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Anne Poindexter Lewis  
Administrative Judge

We concur:

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Edward W. Stuebing  
Administrative Judge

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Gail M. Frazier  
Administrative Judge

